

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

RAYMOND TOSTOVERNIK,)	DOCKET NO.: PT-2011-1
)	
Appellant,)	
-vs-)	FACTUAL BACKGROUND,
)	CONCLUSIONS OF LAW,
THE DEPARTMENT OF REVENUE OF THE STATE OF MONTANA,)	ORDER and OPPORTUNITY FOR JUDICIAL REVIEW
)	
Respondent.)	

Statement of Case

Raymond Tostovernik (Taxpayer) appealed a final decision of the Department of Revenue (DOR) denying Property Tax Assistance Program (PTAP) on four of his properties located on or near Fleshman Creek in Park County, Montana. The Taxpayer argues the DOR denied tax relief on four of his five properties and he seeks to have them treated as one property. The matter was heard before the State Tax Appeal Board on the record, without objection from the parties.

The Board having fully considered the testimony, exhibits, and all matters presented, finds and concludes the following:

Issue

The issue before this Board is whether the Department of Revenue properly denied property tax assistance when calculating the Taxpayer's property taxes?

Summary

Raymond Tostovernik is the Taxpayer in this proceeding and, therefore, has the burden of proof. Based on a preponderance of the evidence, the Board upholds the final decision of the Department of Revenue.

Background and Evidence Presented

1. Due, proper and sufficient notice was given of this matter and of the time and place of the hearing. All parties were afforded opportunity to present documentary evidence.
2. The subject properties are four separately described adjacent lots within the city limits of Livingston, Montana, with the following legal description:

Lots 29 through 32, Block Q, Livingston Riverside Addition, Section 18, Township 02S, Range 10E, in the City of Livingston, County of Park, State of Montana. (Form AB26.)
3. For tax year 2010, the Taxpayer applied for property tax assistance on each of his properties. The value assessed on each of the properties is not at issue in the case.
4. The DOR determined the Taxpayer qualified for property tax assistance and granted his application for assistance on the improvements and land associated with the individually described parcel upon which his primary residence is located. The DOR denied the applications for the remaining parcels. (DOR Submission of Supplemental Information.)
5. The Taxpayer filed an appeal with this Board on June 1, 2011 arguing his property should be treated as one parcel for tax purposes and claims it has been treated as one parcel in past years.

Principles of Law

1. The State Tax Appeal Board has jurisdiction over this matter. (§15-2-302, MCA.)
2. It is the duty of the Department of Revenue to accomplish the appraisal of all taxable city and town lots. (§15-7-101 MCA.)
3. All property in this state is subject to taxation. (§15-6-101(1).)
4. Property qualifying under the property tax assistance program is taxed at the rate of its taxable market value multiplied by a percentage figure based on the income for the preceding calendar year of the owner or owners who occupied the property as their primary residence. (§15-6-134(2)(b)(i).)
5. For purposes of this benefit, the land beneath and immediately adjacent to the residence shall not include any separately described or assessed parcels of land, regardless of whether the parcel is contiguous with or adjacent to the parcel upon which the qualified residence is located. (ARM 42.19.401(11).)
6. The state tax appeal board must give an administrative rule full effect unless the board finds a rule arbitrary, capricious, or otherwise unlawful. (§15-2-301(4), MCA.)
7. Each individual tract of record continues to be an individual parcel of land unless the owner of the parcel has joined it with other contiguous parcels by filing with the county clerk and recorder. (§76-3-103(16)(b), MCA.)

Finding of Fact and Conclusions of Law

The Board must determine, based on a preponderance of the evidence, whether the DOR correctly applied the property tax assistance statutes in valuing Taxpayer's properties.

The Taxpayer makes no argument that the DOR improperly assessed the value of his property or that they incorrectly applied PTAP in valuing his residential lot. His sole argument is that that all of his lots should be treated as one parcel and included with his residence for property tax assistance purposes. He claims that all of his property has been treated as one parcel in the past and he wants the DOR to continue this practice.

The DOR contends this issue is merely a matter of law. The Department is required to appraise all city and town lots. (*See* POL 2.) They argue the legislature has not specifically excluded any of the Taxpayer's property from taxation. Thus, the Legislature created a mechanism to mitigate property taxes for an owner or owners of residential property if the household income does not exceed a certain level. Section 15-6-134, MCA outlines the household income and the corresponding tax relief which the DOR granted the Taxpayer on the individual lot with his residence. The DOR has adopted rules to govern the application of §15-6-134(c) that specifically prohibits the benefit of PTAP on separately described or assessed parcels of land. (*See* POL 5.)

We have not addressed the issue of whether PTAP may be applied to multiple lots owned by a single taxpayer. We have, however, addressed several cases where a single taxpayer has requested that multiple lots be combined for tax purposes. (*See Manicke v. DOR*, PT-2009-67, 8/17/2010.)

Under law, the DOR has some discretion to combine lots for tax purposes. The DOR has stated in prior cases any of the following examples would be justifiable reasons to reach the conclusion that parcels could not be sold separately and, therefore, should be combined to establish assessed value:

1. Two parcels under one ownership and located next to each other have a dwelling that spans the boundary line between the two parcels.
2. A dwelling encroaches on the zoning set back between the two parcels and access through one parcel is necessary to access the other parcel.
3. A parcel has accessory buildings on the other parcel.

4. The owner has formally amended the plat to reflect the deletion of the boundary line between the two parcels. (§76-3-103(16)(b)(ii).)

The Taxpayer may choose to combine the properties into one parcel by changing the title on the separate lots. To date, however, he has not chosen to do so.

We do not find the Taxpayer provided any evidence that the administrative rule is in some manner unlawful, or that the DOR incorrectly applied statutes which govern PTAP. Additionally, the Taxpayer has not provided any evidence that conditions exist which would suggest the lots should be combined for tax purposes. As a result, this Board concludes the evidence presented by the DOR supported the correct application of the PTAP statutes.

ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the Taxpayer's appeal is denied.

Dated this 21st day of July, 2011.

BY ORDER OF THE
STATE TAX APPEAL BOARD

/s/ _____
KAREN E. POWELL, Chairwoman

(S E A L)

/s/ _____
DOUGLAS A. KAERCHER, Member

/s/ _____
SAMANTHA SANCHEZ, Member

Notice: You are entitled to judicial review of this Order in accordance with Section 15- 2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of t his Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 22nd day of July, 2011, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

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